

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nicholas Venduras	Team: Squad #8	CCRB Case #: 202004470	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/02/2020 10:40 PM	Location of Incident: Outside § 87(2)(b) The Bronx	Precinct: 52	18 Mo. SOL 12/2/2021	EO SOL 5/4/2022	
Date/Time CV Reported Wed, 06/03/2020 12:46 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/22/2020 11:37 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Christophe Montera	07819	961961	052 PCT
2. SGT Frank Aliffi	00234	939856	052 PCT
3. POM Garry Tuma	20648	959317	052 PCT
4. LT Hugh Mackenzie	00000	925647	052 PCT
5. POM Robert Glynn	08922	961791	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Joseph Pinero	501	942912	052 PCT
2. POM Mannix Teng	28619	939566	052 PCT
3. SGT Alexander Allen	01063	942941	052 PCT
4. POM Kenneth Rivera	16430	959934	052 PCT
5. POF Gina Mestre	11607	955191	052 PCT
6. POM William Otoole	18460	966746	052 PCT
7. POM Thomas Mullarkey	05409	960981	052 PCT
8. POM Shawn Deluca	21706	959590	052 PCT
9. SGT James Obrien	03060	943624	052 PCT
10. POM Shawn Romero	12923	962063	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Hugh Mackenzie	Abuse: Lieutenant Hugh Mackenzie stopped § 87(2)(b)	§ 87(2)(b)
B.LT Hugh Mackenzie	Abuse: Lieutenant Hugh Mackenzie stopped individuals.	§ 87(2)(b)
C.SGT Frank Aliffi	Abuse: Sergeant Frank Aliffi searched § 87(2)(b)	§ 87(2)(b)
D.POM Garry Tuma	Abuse: Police Officer Garry Tuma frisked individuals.	§ 87(2)(b)
E.POM Garry Tuma	Abuse: Police Officer Garry Tuma searched individuals.	§ 87(2)(b)
F.POM Christophe Montera	Abuse: Police Officer Christopher Montera searched individuals.	§ 87(2)(b)
G.SGT Frank Aliffi	Abuse: Sergeant Frank Aliffi searched § 87(2)(b)'s vehicle.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
H.POM Garry Tuma	Off. Language: Police Officer Garry Tuma made remarks to individuals based upon the gender of individuals.	
I.POM Garry Tuma	Discourtesy: Police Officer Garry Tuma spoke discourteously to individuals.	
J.SGT Frank Aliffi	Force: Sergeant Frank Aliffi used physical force against § 87(2)(b)	
K.POM Christophe Montera	Force: Police Officer Christopher Montera used physical force against § 87(2)(b)	
L.POM Garry Tuma	Force: Police Officer Garry Tuma used physical force against § 87(2)(b)	
M.POM Christophe Montera	Discourtesy: Police Officer Christopher Montera spoke discourteously to individuals.	
N.POM Garry Tuma	Abuse: Police Officer Garry Tuma threatened to arrest individuals.	
O.POM Robert Glynn	Force: Police Officer Robert Glynn used physical force against § 87(2)(b)	

Case Summary

On June 3, 2020, § 87(2)(b) filed this complaint via telephone with IAB. The CCRB received this case on June 22, 2020, and was assigned case number 202004470.

On June 2, 2020, at approximately 10:40 PM, which was after the then-in-effect Mayoral curfew, § 87(2)(b) and a group of people were outside § 87(2)(b) in the Bronx after a barbeque. Multiple members of service (MOS) from the 52nd Precinct, led by Lieutenant Hugh Mackenzie, including Sergeant Frank Aliffi, Police Officer Christopher Montera, and Police Officer Garry Tuma approached this group while on patrol (**Allegations A & B: Abuse of Authority – Stop, § 87(2)(g)**). Sgt. Aliffi allegedly searched § 87(2)(b) (**Allegation C: Abuse of Authority – Search, § 87(2)(g)**). PO Tuma allegedly frisked individuals and searched other individuals (**Allegations D: Abuse of Authority – Frisk, § 87(2)(g)** & **Allegation E: Abuse of Authority – Search, § 87(2)(g)**). PO Montera also allegedly searched individuals. (**Allegation F: Abuse of Authority – Search, § 87(2)(g)**)

After these alleged searches, Sgt. Aliffi searched § 87(2)(b)'s vehicle parked in front of the building (**Allegation G: Abuse of Authority – Vehicle Search, § 87(2)(g)**). Around the time Sgt. Aliffi opened the door and throughout the rest of the incident, PO Tuma used words such as “bitch” and “pussy” when speaking to civilians (**Allegation H: Offensive Language – Gender, § 87(2)(g)**). PO Tuma also used profanity when speaking to civilians shortly after arriving and would continue to use the word “fuck” and its variants until the end of the interaction. (**Allegation I: Discourtesy – Word, § 87(2)(g)**)

At that point an angry § 87(2)(b) shouted at Sgt. Aliffi, telling him to get out of his car while standing very close and clapping his hands, which caused Sgt. Aliffi to shove § 87(2)(b)'s chest (**Allegation J: Physical Force – Pushed/Shoved/Threw, § 87(2)(g)**). At that point, PO Montera and PO Tuma attempted to separate § 87(2)(b) from Sgt. Aliffi and a shoving match ensued (**Allegations K & L: Physical Force – Pushed/Shoved/Threw, § 87(2)(g)**). At that point PO Montera also used profanity when speaking to civilians (**Allegation M: Discourtesy – Word, § 87(2)(g)**).

Officers called for additional units and Sergeant William O’Toole, Sergeant James O’Brien, Police Officer Shawn Romero and Police Officer Robert Glynn, among others, also of the 52nd Precinct responded. Officers instructed the civilians to go inside and PO Tuma said anyone who is not inside would be “going.” (**Allegation N: Abuse of Authority – Threat of Arrest, § 87(2)(g)**). § 87(2)(b) did not go inside so PO Tuma and PO Montera placed him in handcuffs after a brief physical struggle. Once in custody, § 87(2)(b) was transported to the 52nd Precinct stationhouse by Sgt. O’Brien, PO Romero, and PO Glynn. While in the backseat, PO Glynn allegedly punched the handcuffed § 87(2)(b) (**Allegation O: Physical Force – Punched/Kicked/Kneed, § 87(2)(g)**). At the stationhouse, § 87(2)(b) received a summons for Disorderly Conduct and was released a few hours later.

The NYPD Legal Department provided nine Body-Worn Camera (BWC) videos in regards to this incident. **(Board Review 1)** § 87(2)(b) provided three cell phone videos in regards to this incident also. **(Board Review 2, Board Review 3 & Board Review 4)**

Findings and Recommendations

- Allegation A: Abuse of Authority: Lieutenant Hugh Mackenzie stopped § 87(2)(b)**
- Allegation B: Abuse of Authority: Lieutenant Hugh Mackenzie stopped individuals.**
- Allegation C: Abuse of Authority: Sergeant Frank Aliffi searched § 87(2)(b)**
- Allegation D: Abuse of Authority: Police Officer Garry Tuma frisked individuals.**
- Allegation E: Abuse of Authority: Police Officer Garry Tuma searched individuals.**
- Allegation F: Abuse of Authority: Police Officer Christopher Montera searched individuals.**
- Allegation G: Abuse of Authority: Sergeant Frank Aliffi searched § 87(2)(b) s vehicle.**
- Allegation H: Offensive Language: Police Officer Garry Tuma made remarks to individuals based upon the gender of individuals.**
- Allegation I: Discourtesy: Police Officer Garry Tuma spoke discourteously to individuals.**
- Allegation J: Force: Sergeant Frank Aliffi used physical force against § 87(2)(b)**
- Allegation K: Force: Police Officer Christopher Montera used physical force against § 87(2)(b)**
- Allegation L: Force: Police Officer Garry Tuma used physical force against § 87(2)(b)**
- Allegation M: Discourtesy: Police Officer Christopher Montera spoke discourteously to individuals.**
- Allegation N: Abuse of Authority: Police Officer Garry Tuma threatened to arrest individuals.**
- Allegation O: Force: Police Officer Robert Glynn used physical force against § 87(2)(b)**

In his statement to the CCRB, § 87(2)(b) said he and some friends were packing folding furniture and a domino game box into his white four-door Honda Accord parked almost directly in front of the entrance to § 87(2)(b) after a backyard barbeque on the night of June 2, 2020. **(Board Review 5)** Sgt. Aliffi's BWC shows § 87(2)(b) saying he wants to turn his car off at timestamp 2:00, indicating it was on at the time. **(Board Review 6)** A city-wide curfew was in place beginning at 8:00 PM that night until 5:00 AM the next morning and allowed MOS to issue C-Summonses for Administrative Code 3-108, Violating a Mayoral Emergency Order. **(Board Review 7)** While there were some exceptions to the curfew, § 87(2)(b) and the civilians he was with did not fall into these categories such as essential workers, the homeless and those seeking medical attention. § 87(2)(b) acknowledged he was aware of the curfew in his initial call to IAB at timestamp 4:39 but thought it would not be an issue if he were only packing his car. **(Board Review 8)** In his statement to the CCRB, Sgt. Aliffi explained the curfew stemmed from the previous night's rioting and looting. **(Board Review 9)** He said upon seeing a group of about ten men around § 87(2)(b)'s car, which was on, he and the other MOS on patrol, including

Lieutenant Hugh Mackenzie, PO Tuma and PO Montera stopped to tell them to go inside. Not only were they out beyond curfew but they were playing loud music from § 87(2)(b)'s car and Sgt. Aliffi remembered movement in and out of the vehicle. According to Sgt. Aliffi, he initially had no intention to take any law enforcement action beyond having the crowd disperse since he did not want the rioting to continue from the night before. PO Tuma also said the only reason to approach the group was to get them to go inside, citing the curfew, but they became argumentative, asking why they had to leave which caused PO Tuma to reiterate the curfew. **(Board Review 10)** Sgt. Aliffi described the way they asked these civilians to disperse and go inside as peaceful and calm. **(Board Review 9)**

§ 87(2)(b) said three officers, identified via BWC as Sgt. Aliffi, PO Tuma and PO Montera searched § 87(2)(b) and his friends by feeling over their clothes and took items out of their pockets. **(Board Review 5)** Sgt. Aliffi said he did not remember searching anyone and his BWC only shows PO Tuma patting over one civilian's clothes at timestamp 0:24 **(Board Review 9 & Board Review 6)** Sgt. Aliffi's BWC begins when he exits his vehicle and while he briefly speaks to § 87(2)(b) he does not search him. The civilians are on the sidewalk and § 87(2)(b)'s vehicle appears to be empty. No other BWC shows officers searching any other civilians, however PO Tuma and PO Montera's BWCs do not record their approach to the group and begin on the sidewalk. PO Tuma did not remember if he searched or frisked anyone at that point, but said he probably searched § 87(2)(b) later once he was handcuffed before placing him in an RMP, but he was unsure. **(Board Review 10)**

Both Sgt. Aliffi and PO Tuma stated they detected marijuana when they approached the group. **(Board Review 9 & Board Review 10)** PO Tuma said he smelled it coming from § 87(2)(b)'s car. He did not remember if it was burning or fresh marijuana but recalled an opaque smoke in the air. Sgt. Aliffi recalled the strong odor of burning marijuana coming from the vehicle when he was a few feet away but could not remember if he saw anyone smoking. **(Board Review 9)** PO Montera's BWC indicates the presence of marijuana because, at timestamp 1:50, he says he appreciates a cooperating civilian and will take no action on the marijuana. **(Board Review 11)**

Due to this odor, Sgt. Aliffi said he was justified in searching § 87(2)(b)'s vehicle. **(Board Review 9)** His BWC shows him opening § 87(2)(b)'s passenger door at timestamp 0:40 and shining his flashlight around the unoccupied vehicle. **(Board Review 6)** During his brief search of the vehicle, he believes he found small crumbs of marijuana in the passenger seat area and remembers smoke in the car. **(Board Review 9)** However, his BWC does not show this evidence. **(Board Review 6)**

PO Tuma described § 87(2)(b) as being very angry at Sgt. Aliffi for being near his car and § 87(2)(b) admitted he was very upset. **(Board Review 10 & Board Review 5)** For approximately two minutes from 0:40 until timestamp 2:34 in Sgt. Aliffi's BWC, § 87(2)(b) argues with the MOS about the search as Sgt. Aliffi goes in and around the passenger seat. **(Board Review 6)** During this time, § 87(2)(b) gets louder and more animated, other civilians become more involved, and everyone talks over one another. At one point at timestamp 1:05, PO

Tuma moves § 87(2)(b) away from Sgt. Aliffi and § 87(2)(b)'s energy level increases and he shouts more. PO Montera's BWC shows him letting § 87(2)(b) go after a few seconds at timestamp 0:33. **(Board Review 11)**

§ 87(2)(b) appears to become more agitated when Sgt. Aliffi takes the keys out of the ignition at timestamp 2:07 of his BWC. **(Board Review 6)** Just prior to that, § 87(2)(b) had been very close to Sgt. Aliffi, saying he wanted to turn off and close his car. When Sgt. Aliffi tells him to get out of his face, § 87(2)(b) walks around the back of the vehicle towards the driver's door saying he will get out of there. At that point Sgt. Aliffi reaches in and takes out the keys causing § 87(2)(b) to demand them back. Sgt. Aliffi said he took the keys because he didn't want § 87(2)(b) fleeing or using the vehicle as a weapon against MOS. **(Board Review 9)**

Back on the passenger side of the vehicle, § 87(2)(b) quickly walks up to Sgt. Aliffi and shouts "Hey! Hey! Hey!" while loudly clapping on each word for emphasis about a foot away at timestamp 1:59 of PO Montera's BWC. **(Board Review 11)** At that point, Sgt. Aliffi pushes § 87(2)(b) away making contact with his upper right chest. PO Tuma and PO Montera then take hold of § 87(2)(b) and move him towards the back of his car and off the sidewalk. Cell phone video footage shot from across the street out of what could be a second floor window shows PO Tuma and PO Montera attempting to gain control of a loud and energetic § 87(2)(b) **(Board Review 3)** Other civilians attempt to separate the officers and § 87(2)(b) which adds to the increasingly chaotic nature of the situation. At least one of these civilians, a male in a white t-shirt, has slurred and repetitive speech in PO Montera's BWC at timestamp 1:20. **(Board Review 11)** During this portion of PO Montera's BWC, he tells § 87(2)(b) repeatedly to not go near Sgt. Aliffi. This shoving match lasts for approximately 35 seconds. The cell phone video shows, while Sgt. Aliffi and Lt. McKenzie are near and occasionally make contact, PO Tuma and PO Montera entangle with § 87(2)(b) the most. **(Board Review 3)** At timestamp 0:25 of this cellphone video, a MOS shouts they are not arresting § 87(2)(b) and they let him go.

The officers and § 87(2)(b) separate briefly as shown in PO Tuma's BWC and the MOS sternly tell the civilians to get on the sidewalk. **(Board Review 12)** § 87(2)(b) shouts threats of physical harm while waving his arms as the man in the white t-shirt pushes him away from officers at timestamp 2:38. As PO Tuma moves down the block towards the entrance of 1296 Morris Avenue, a crowd is visible and lots of people are shouting. Officers tell everyone to go back inside, including PO Tuma who says he's "done," and anyone not inside is "going." Around this time other officers, including Sgt. O'Toole arrive on scene as backup as demonstrated by his BWC. **(Board Review 13)**

PO Tuma said when he and the other officers told everyone to get off the street and go home, he heard someone in this crowd shout "I got something for you!" at least twice which he understood as a threat to his safety and that of his fellow officers. **(Board Review 10)** He said the situation then grew more tense and chaotic and he realized it could quickly get out of control. At timestamp 2:57, PO Tuma's BWC shows most people have gone inside, but § 87(2)(b) is still outside sitting on the front steps. At timestamp 3:09 officers surround § 87(2)(b) and at timestamp 3:20,

PO Tuma says, “cuff him!” and takes out his handcuffs. **(Board Review 12)** He instructs § 87(2)(b) to give him his arm repeatedly at timestamp 3:27. It takes almost a full minute for the officers to get § 87(2)(b) handcuffed after a physical struggle.

PO Tuma said § 87(2)(b) resisted being placed in handcuffs by flailing and stiffening his arms, which made it difficult for him and PO Montera to gain control. **(Board Review 10)** He was trying to push himself away from PO Tuma and PO Montera but did not punch or strike them. To gain control of § 87(2)(b) he said he and PO Montera forcefully took him to the ground after a few seconds. While on the ground, § 87(2)(b) continued to struggle and stiffen his arms, so PO Tuma said he used at least two hand strikes to gain compliance but was not sure how many exactly or where on § 87(2)(b)'s body they landed. He said he used hand strikes because that was the lowest level of force he could use and still gain control of § 87(2)(b).

While another 15-second cellphone video provided by § 87(2)(b) shows him on the ground with PO Tuma and PO Montera attempting to place him in handcuffs, other officers and flashlights at times obscure what exactly is happening. **(Board Review 4)** There appears to be a lot of movement on PO Montera's and PO Tuma's BWC at this point, but the footage is unclear, dark, and shaky. **(Board Review 11 & Board Review 12)** Sgt. O'Toole's BWC shows he assisted in handcuffing § 87(2)(b) from timestamp 0:31 until timestamp 0:51, but the footage is too dark to see what is happening. **(Board Review 13)**

At some point between the initial shove and § 87(2)(b) being placed in handcuffs, other civilians began throwing items from the roof and/or windows of the building at the officers. Both Sgt. Aliffi and PO Tuma said the situation was now too tense and increasingly dangerous to remain on-scene, so officers began to leave. **(Board Review 9 & Board Review 10)** PO Tuma used the term “airmail.” PO Montera's BWC captures him warning other officers of these projectiles later at timestamp 5:24. **(Board Review 11)**

Once he was in handcuffs, PO Tuma brought § 87(2)(b) to an NYPD SUV where PO Glynn sat in the backseat with him, PO Romero was driving, and Sgt. O'Brien was in the passenger seat. **(Board Review 5)** § 87(2)(b) said he told these MOS they were cowardly and weak since they needed handcuffs to subdue him. In reaction to these insults, § 87(2)(b) said PO Glynn punched him on the left side of his face, ribs, and chest.

PO Glynn said this did not happen. **(Board Review 14)** He said he and the two other MOS attempted to calm § 87(2)(b) down and wanted to transport him as quickly as possible. He said § 87(2)(b) was visibly upset but PO Glynn did not get into any type of physical struggle with him. Had there been one, he said PO Romero would have pulled over or turned around to see what was going on. PO Glynn did not remember anything § 87(2)(b) said to make him angry enough to strike him. PO Romero's statement was consistent with PO Glynn's. **(Board Review 15)** He remembered the trip back as generally uneventful, and he would have pulled over if anything happened in the backseat. § 87(2)(b)'s appearance was the same getting out of the RMP as going in, with no indication PO Glynn did anything to him.

BWC by Sgt. O'Brien and PO Romero captured the ride back to the stationhouse. (**Board Review 16 & Board Review 17**) While they are facing forward, there are no sounds of struggle coming from the back seat and § 87(2)(b) sounds relatively calm. He insults the officers with whom he struggled on Morris Avenue but says he is no threat to the MOS in the car.

Once at the stationhouse, § 87(2)(b) received a summons for disorderly conduct from PO Tuma with a note in the narrative saying "AT TPO DEFT WAS ACTING IN AVIOLENT [*sic*] MANNER AND THREATENING MANNER TOWARDS PD." (**Board Review 18**) When he was released, he called IAB to file this complaint. (**Board Review 5**)

Throughout the incident, PO Tuma and PO Montera use profanity during some of the more chaotic portions. Examples from PO Tuma's BWC are at timestamp 0:52 when he tells the man in the white t-shirt that another civilian needs to "fuckin' go inside," and just after § 87(2)(b) aggressively approaches Sgt. Aliffi, PO Tuma says, "You don't touch a fuckin' cop!" (**Board Review 12**) During the first shoving match, PO Tuma says, "Shut the fuck up" at timestamp 2:05 and to "fuckin' stop," at timestamp 2:14. While attempting to place him in custody PO Tuma instructs § 87(2)(b) to give him his "fuckin' arm" repeatedly at timestamp 3:27. Once in custody, § 87(2)(b) insults him and the other officers, to which PO Tuma tells him to "shut the fuck up" at timestamp 4:15 and to get in the "fucking car" at timestamp 5:29

PO Montera uses less profanity than PO Tuma on his own BWC footage. After § 87(2)(b) threatens the officers at timestamp 2:37, the man in the white t-shirt evidentially informs the officers that § 87(2)(b) is intoxicated and PO Montera says he doesn't care if he's "fucked up, you don't do that" at timestamp 2:50. (**Board Review 11**) At timestamp 3:24, as he walks towards the building he says "fuck you, get back inside" to an angry and shouting § 87(2)(b)

PO Tuma also uses insults based on gender towards civilians. Shortly after the audio turns on at timestamp 0:30 in his BWC, he yells, "That's what I thought, bitch," at a male civilian who has run away. (**Board Review 12**) A few seconds later he repeats this person is a "bitch" and adds he is also a "pussy." Another civilian says the man is a pussy and PO Tuma says, "I know he's a pussy!" while walking away at timestamp 0:54. He also calls someone a "pussy" twice at timestamp 2:50 and at timestamp 2:57 again refers to someone as a "bitch."

PO Tuma said he used strong language and profanity to assert authority and called at least one male civilian a "bitch" and a "pussy" to show he was serious. (**Board Review 10**) He did not consider these words to be different from other swears, nor did he think they were gendered. He said there are no criteria or behaviors that would classify someone as a "bitch" or a "pussy" and did not intend for these insults to mean he was calling a male a female or that a male was acting like a female.

Patrol Guide 212-11 entitled *Investigative Encounters* allows officers to stop civilians based on reasonable suspicion which exists when "information known to the member of the service would make [them] believe that a felony or Penal Law misdemeanor has been, is being or is about to be committed." (**Board Review 19**) The curfew from 8:00 PM until 5:00 AM allowed MOS to issue C-Summonses by stating "while the curfew is in effect, people and vehicles are not allowed in

public,” except for certain essential workers, the homeless, and people seeking medical attention.

(Board Review 7) § 87(2)(g)

Patrol Guide 212-11 also instructs officers on when they can search a civilian during a stop. With consent, an officer may search a person. (Board Review 19) It also says if officers have a reasonable suspicion a civilian has a weapon based feeling over their clothes, they may search the person further. As Sgt. Aliffi’s BWC shows, he never searched anyone from when he got out of his vehicle until he turned it off after the struggle with § 87(2)(b) BWC by PO Tuma and PO Monterera recorded beyond where Sgt. Aliffi stopped and do not show anyone searching § 87(2)(b) until officers handcuff him and bring him to an RMP for transport by other MOS.

§ 87(2)(g)

People v. Chestnut, 43 A.D.2d 260 ruled the smell of marihuana smoke, with nothing more, can be sufficient to provide police officers with probable cause to search an automobile and its occupants. (Board Review 20) Since both Sgt. Aliffi and PO Tuma said they smelled marijuana coming from the vehicle, the BWCs show officers talking to civilians about marijuana, and given that both § 87(2)(b) and Sgt. Aliffi said people were moving in and out of the car, meaning the doors would have been open around the time the officers approached, § 87(2)(g)

In terms of searches and frisks, only PO Tuma appears to be feeling over someone’s clothes towards the beginning of Sgt. Aliffi’s BWC. He could not remember who he frisked, or when, and was unable to provide further details. Because BWC footage shows the vehicle as unoccupied, § 87(2)(b)

§ 87(2)(g)

Additionally, while Sgt. Aliffi’s BWC shows PO Tuma frisking an individual, there is no indication of him going into the civilian’s pockets. PO Monterera and PO Tuma’s BWC, which as stated above capture almost the entire incident until § 87(2)(b) is brought to an RMP with other MOS, do not show them searching anyone either. It is possible, however, these officers performed searches of civilians that were not on BWC since PO Tuma’s and PO Monterera’s BWCs began recording

when they were already on the sidewalk. § 87(2)(g)

Officers must also follow Patrol Guide Procedure 203-10, entitled *Prohibited Conduct*, which instructs them to refrain from “using discourteous or disrespectful remarks regarding another person's ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability.” (**Board Review 21**) In *DCT Case #79627/04* Assistant Deputy Commissioner of Trials, Robert W. Vinal ruled, “When a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control of the situation, the police officer’s verbal slip does not rise to the level of actionable misconduct.” (**Board Review 22**)

§ 87(2)(g)

However, as noted in the same section of the Patrol Guide, offensive language based on, but not limited to, gender is prohibited. (**Board Review 21**) When PO Tuma used the term “bitch” and “pussy” he was using derogatory language, essentially commenting on how different genders are expected to behave. While PO Tuma may consider these terms to be interchangeable with other discourtesies or insults, they are not and are in fact comments on gender. § 87(2)(g)

Officers receive force guidelines from Patrol Guide Procedure 221-01 which instructs that “force may be used when it is reasonable to ensure the safety of a member of the service...or when it is reasonable to place a person in custody or to prevent escape from custody.” (**Board Review 23**) Additionally, “MOS will use only the reasonable force necessary to gain control or custody of a subject.” Statements made by § 87(2)(b) and the officers, as well as video evidence show Sgt. Aliffi, PO Montera and PO Tuma engaged in physical force with § 87(2)(b) § 87(2)(b). § 87(2)(g) s behavior escalated the situation and demonstrated he was a threat to officers. § 87(2)(g)

§ 87(2)(b) This also applies when PO Montera and PO Tuma engaged in the showing match that happened just after. Additionally, because § 87(2)(b) resisted when PO Montera and PO Tuma tried handcuffing him and made specific threats against officers, § 87(2)(g)

Patrol Guide 221-01 also states that MOS are prohibited from “any level of force on handcuffed or otherwise restrained subjects unless necessary to prevent injury, escape or to overcome active

physical resistance or assault.” (**Board Review 23**) Based on PO Glynn’s and PO Romero’s statements regarding the transportation back to the stationhouse and BWC by PO Romero and Sgt. O’Toole, PO Glynn does not appear to have used any force while in the backseat with § 87(2)(b). As PO Romero and PO Glynn stated, had there been signs of struggle or force in the backseat, PO Romero would have almost certainly pulled over to see what was happening. § 87(2)(g)

Civilian and Officer CCRB Histories

- Lt. Hugh Mackenzie has been a member of service for 21 years and has been the subject in 10 CCRB complaints and 19 allegations, two of which were substantiated (**Board Review 24**):
 - 200505991 involved substantiated allegations of Abuse - Question and/or Stop and Abuse - Search (of person) against Lt. Mackenzie. The Board recommended charges and the NYPD imposed instructions.
 - § 87(2)(g)
- Sgt. Frank Aliffi has been a member of service for 15 years and has been the subject in 13 CCRB complaints and 44 allegations, none of which were substantiated. § 87(2)(g)
- PO Christopher Montera has been a member of service for five years and has been the subject in six CCRB complaints and nine allegations, none of which were substantiated. § 87(2)(g)
- PO Gary Tuma has been a member of service for six years and has been the subject in eight CCRB complaints and 19 allegations, none of which were substantiated. § 87(2)(g)
- PO Robert Glynn has been a member of service for five years and this is the first CCRB complaint to which he has been a subject. (**Board Review 28**)
- This is the first complaint to which § 87(2)(b) has been a party. (**Board Review 29**)

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming personal injuries including but not limited to injuries to ribs, face, head, neck, back, chest, abdomen, arms, legs the full extent of which is not presently known, emotional distress, anxiety, panic attacks, anguish, loss of enjoyment of life and seeking \$10 Million as redress (**Board Review 30**). There is no 50H hearing scheduled.

- § 87(2)(b) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Squad No.: 7

Investigator:	<u>Nicholas Venduras</u>	<u>Inv. Nicholas Venduras</u>	<u>August 10, 2021</u>
	Signature	Print Title & Name	Date

Manager Vanessa Rosen	August 20, 2021
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Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date